Filed 10/30/12 Barba v. Cal. Agri-Sprayers CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

IRMA BARBA, Plaintiff and Appellant, v. CALIFORNIA AGRI-SPRAYERS, INC., Defendant and Respondent.	F061777 (Super. Ct. No. CV-263563) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Linda S. Etienne, Commissioner.

Dessy & Dessy and Ronald D. Dessy for Plaintiff and Appellant.

Dowling Aaron, Lynne Thaxter Brown and Stephanie Hamilton Borchers for Defendant and Respondent.

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Plaintiff Irma Barba purchased real property in Delano, California, from defendant California Agri-Sprayers, Inc. A portion of the purchase price was financed by defendant taking back a promissory note, secured by a deed of trust. When plaintiff defaulted on her payment obligations, defendant initiated nonjudicial foreclosure proceedings. Plaintiff then filed the underlying action seeking several forms of equitable relief, including cancellation of any resulting foreclosure sale or trustee's deed, declaratory relief to reduce the amount of her indebtedness to defendant, and a "purchaser's lien" to obtain reimbursement of expenses. Although the trial court agreed with plaintiff that defendant's prior foreclosure proceedings were defective or invalid, cancellation was deemed unnecessary since it appeared that no actual foreclosure sale had or would occur pursuant to those proceedings. The trial court did grant limited reformation in plaintiff's favor by correcting the sale documents to reflect defendant's true name. However, as to plaintiff's other equitable claims, relief was denied because the trial court concluded that such claims were not adequately proven at trial. Accordingly, most of the remedies sought in plaintiff's complaint were denied. Plaintiff now appeals from that judgment. In essence, plaintiff insists that under the evidence presented at trial, the trial court *had to* grant more equitable relief than it did. We disagree. Since those matters were within the trial court's discretion, and since no manifest abuse of that discretion is apparent, the judgment will be affirmed.

FACTS AND PROCEDURAL HISTORY

Plaintiff's Purchase of the Property

In March 2006, plaintiff purchased commercial real property in Delano, California, commonly known as "1132 High Street & vacant land," consisting of a restaurant, abandoned hotel and related parking areas (the property). The restaurant was under an existing lease to a tenant. Defendant was the seller of the property, but for reasons that are not entirely clear, the grant deed and other documents relating to the real estate transaction erroneously identified defendant as "Cal Agri Sprayers, Inc." rather

than as California Agri Sprayers, Inc. The grant deed and escrow instructions were signed on behalf of defendant by "Wayne Billingsley, President" and "Wava Billingsley, Secretary." The purchase price of the property was $550,000, with $100,000 paid by plaintiff as a down payment through escrow and the balance of the purchase price payable under a promissory note in favor of defendant. The promissory note obligated plaintiff to make payments to defendant of $1,992.49 per month during the first year; $2,129.66 per month during the second year; and $2,565.85 thereafter. The promissory note was secured by a deed of trust in which defendant was the beneficiary. Upon close of escrow, the grant deed and deed of trust were recorded on April 5, 2006.

Events After Close of Escrow

Two days after escrow closed, plaintiff received a strange communication. Dudley Steele, who identified himself as a manager of "California Agri. Sprayers, Inc." sent a letter to plaintiff telling her that neither he nor (to his knowledge) the corporation were informed of the sale and he instructed plaintiff to "stop" any and all actions concerning the property.

Nevertheless, plaintiff began making repairs to the property in the weeks after escrow closed. In May 2006, plaintiff timely made her first monthly payment due under the promissory note. During the succeeding six or seven months, plaintiff made her monthly payments under the promissory note that were due for June, July, August, September, October and November 2006, although these payments were somewhat late. Plaintiff then stopped making her regular monthly payments. Later, plaintiff paid lump sums of $10,000 and $18,000 in an effort to get current and cure the amount of her delinquency under the promissory note, which lump sum payments will be referred to below in the time frame in which they occurred.

In July 2006, defendant, by and through its then attorney, Richard Papst, filed a complaint against plaintiff to quiet title to the property and for cancellation of the grant deed recorded by plaintiff on April 5, 2006, on the ground that the grant deed "was

apparently executed without any corporate authority" (the quiet title complaint).[1] As noted, plaintiff continued to pay the monthly installments due under the promissory note in August, September, October and November 2006. Defendant dismissed the quiet title complaint against plaintiff in April 2007.

On June 1, 2007, plaintiff sent a check for $10,000 to defendant, in an attempt to bring her account current under the promissory note.

On August 9, 2007, a substitution of trustee form was recorded, whereby Mr. Papst was substituted as trustee under the deed of trust securing the promissory note, in place of Commonwealth Land Title Company. The substitution of trustee form was signed by "Dudley M. Steele, Secretary" and was purportedly retroactive to February 1, 2007.

On August 24, 2007, Mr. Papst, as successor trustee, recorded a trustee's deed upon sale (Trustee's Deed) purportedly conveying title to the property to defendant. The Trustee's Deed recited that plaintiff had defaulted on her obligations, that defendant gave notice of default and notice of the time and place of the sale, and that the property was sold at public auction on July 23, 2007.

Mr. Steele wrote to plaintiff on September 3, 2007, and enclosed a copy of the Trustee's Deed. Mr. Steele's letter told plaintiff that the property was sold at a public auction on July 23, 2007, and that as of that date "you no longer have any legal ownership rights to this property." Mr. Steele's letter also informed plaintiff that he had instructed the restaurant tenant to "remit all rentals on this property to California Agri-Sprayers Inc." starting July 23, 2007. Prior to that time, since the close of escrow,

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[1] The quiet title complaint alleged that "California Agri-Sprayers, Inc., a California corporation," was and is the owner of "the fee simple title" to the property. No allegation was made that any other known parties (besides plaintiff) possessed or claimed an interest in the property adverse to said fee simple title.

plaintiff had been collecting rent from the restaurant tenant, except in months that the tenant was unable to pay.

On September 4, 2007, plaintiff sent a check to defendant in the amount of $2,500. The check was returned unpaid due to insufficient funds.

In October 2007, Mr. Papst wrote to plaintiff's attorney, advising that "[b]ecause of a variety of complications, [defendant] will undertake no action based on the Trustee's Deed [and] will be recording a document rescinding the Trustee's Deed forthwith." Plaintiff testified at trial that she confirmed the Trustee's Deed was cancelled.

On December 12, 2007, Mr. Papst, as successor trustee under the deed of trust and as agent for defendant, recorded a notice of default and election to sell under deed of trust (Notice of Default). The Notice of Default stated that plaintiff was in default on her loan obligations in the sum of $10,847.16, and that she was also in default on property taxes due in the sum of $5,394.54. Plaintiff sent a check in the amount of $18,000 to defendant with a letter stating the check was "to be applied to the accrued interest and principal currently payable on the note," and she requested an accounting, itemizing the manner in which the payment was applied. Defendant never provided an accounting to plaintiff.

On March 25, 2008, Mr. Papst, as successor trustee under the deed of trust, recorded a notice of trustee's sale, advising plaintiff that she was in default under the deed of trust and warning that unless plaintiff took action to protect her property, it may be sold at a public auction on April 18, 2008. One week later, Mr. Papst sent a letter to plaintiff's attorney stating that defendant would record a cancellation of the notice of trustee's sale and Notice of Default. The letter further confirmed that "no trustee sale will take place on the date and time previously set."

Plaintiff testified at trial that since her purchase of the property, she has spent approximately $10,000 on repairs to the property, and she has paid approximately $27,300 in property taxes.

The Pleadings

Plaintiff filed her complaint on April 8, 2008. The complaint set forth equitable causes of action for declaratory relief, cancellation, reformation, and the establishment and foreclosure of a purchaser's lien. Plaintiff alleged in the complaint that she did not receive "clear title" to the property because the sale documents erroneously referred to "Cal Agri Sprayers, Inc." instead of California Agri-Sprayers, Inc. Plaintiff claimed that since conveyance of clear title was a condition precedent to her payment obligations, and since she did not receive such title, defendant had no right to enforce any obligations under the promissory note and deed of trust. Plaintiff further alleged that defendant engaged in a course of conduct that wrongfully deprived plaintiff of the beneficial enjoyment of the property and interfered with her ownership rights.

Based on these allegations, plaintiff's first cause of action for declaratory relief sought a judicial determination (i) reforming the grant deed, promissory note and deed of trust to reflect that California Agri-Sprayers, Inc. was the true name of the grantor, payee and beneficiary in those documents; (ii) declaring that plaintiff did not have any payment obligations prior to receiving clear title; (iii) declaring that the December 12, 2007, Notice of Default and the March 25, 2008, notice of trustee's sale were invalid, and cancelling any resulting Trustee's Deed or sale from the pending foreclosure proceedings; and (iv) reducing or offsetting plaintiff's obligations under the promissory note because of defendant's conduct and wrongful interference with plaintiff's rights.

In her second cause of action for cancellation of the Trustee's Deed, plaintiff sought cancellation of any trustee's deed that may have resulted from the allegedly invalid foreclosure proceedings. In her third cause of action for reformation, plaintiff again requested that the grant deed, promissory note and deed of trust[2] be reformed to

[2] For convenience, we sometimes refer to these documents together as the sale documents.

reflect the parties' true intentions—namely, that California Agri-Sprayers, Inc. was the true name of the grantor, payee and beneficiary on those sale documents. In her fourth cause of action for a "purchaser's lien," plaintiff alleged in essence that there was a failure of consideration because defendant failed to deliver clear title to plaintiff, and that therefore she was entitled to reimbursement of the purchase price, tax payments and all other property-related expenses she had incurred.

In response to plaintiff's complaint, defendant filed a cross-complaint alleging four causes of action, three of which were against Mr. Papst and only one was against plaintiff. All claims against Mr. Papst were severed at trial.[3] The sole cause of action in defendant's cross-complaint against plaintiff was for judicial foreclosure of the deed of trust securing the promissory note.

The Trial and Judgment

The trial below included testimony by plaintiff and by defendant's general manager, Mr. Steele, relating to the sale of the property to plaintiff and the post-sale events described above. A number of documents were admitted into evidence, including documents reflecting the property sale (e.g., escrow instructions, promissory note, grant deed and deed of trust), defendant's subsequent quiet title action, and defendant's several efforts at nonjudicial foreclosure.

In an effort to show that she did not receive clear title, plaintiff sought to introduce into evidence a letter that defendant's trial attorney, Gerald M. Leverett, wrote to Wayne and Wava Billingsley in February 2006 regarding "Commonwealth Escrow Number 08450004-106-AH6, Property Address: Vacant Lot, Delano, CA 93215." The referenced escrow number was different than the one used in the sale to plaintiff. In the letter, which was identified at trial as plaintiff's exhibit No. 1, Mr. Leverett stated that he "could be wrong," but he understood the vacant lot was in the name of a dissolved

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[3] Mr. Papst did not appear at trial and had filed bankruptcy.

corporation, "Arbol Verde," and he warned that he did not think efforts to correct the title problem were adequate. At trial, plaintiff's attorney sought to authenticate the letter by claiming it was produced by the title company during discovery. Mr. Leverett objected because the letter was addressed to the Billingsleys—his clients—and there was no evidence the letter came from the title company or, if it did, how the title company obtained possession of it. Plaintiff's attorney responded that he would bring the actual document production the next day, and the trial court agreed to reserve its ruling on admissibility until then. Plaintiff's attorney failed to bring the title company's document production to court and did not pursue the matter further. The letter was not admitted into evidence, although the trial court briefly referred to it in its judgment.

The parties filed written briefs containing their closing arguments. Plaintiff's closing brief requested, as a first preference, that the trial court issue declaratory relief that plaintiff's obligations under the promissory note be equitably adjusted (reduced) based on the events to date. Alternatively, plaintiff's closing brief requested a rescission of the transaction and the imposition of a purchaser's lien to secure repayment of all of plaintiff's property-related expenses.[4] Additionally, plaintiff's closing brief requested miscellaneous orders, such as the issuance of a policy of title insurance, conveyance of certain restaurant equipment free and clear of third party ownership or lien claims, and conveyance of possessory rights to the restaurant subject only to a month-to-month tenant. As correctly pointed out by defendant, plaintiff did not plead any facts regarding these miscellaneous items or request such relief in her complaint.[5]

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[4] Plaintiff's complaint did not expressly allege or seek rescission, and this appears to be her first mention of that particular theory.

[5] Plaintiff responded by observing that in a declaratory relief cause of action, which is equitable in nature, the trial court would have broad discretion to grant entire relief and make plaintiff whole.

Defendant's closing brief agreed that the sale documents (i.e., promissory note, grant deed and deed of trust) should be reformed to reflect defendant's correct name of "California Agri-Sprayers, Inc.," instead of "Cal Agri-Sprayers, Inc." Interestingly, plaintiff's closing brief argued that merely correcting the misnomer might not cure the alleged title defect after all and, therefore, plaintiff was no longer actively pursuing that remedy.

Judgment was entered on October 22, 2010, and was set forth in a document entitled "FINDINGS, CONCLUSIONS AND JUDGMENT." The trial court granted reformation of the sale documents to reflect defendant's true name, but otherwise denied all relief under plaintiff's complaint. In regard to the declaratory relief cause of action, the trial court found that plaintiff received clear title to the property based on the grant deed she received from defendant and the legal presumption that it passed fee simple title. According to the trial court, plaintiff's contention to the contrary was not substantiated: "There is no evidence before the Court in the form of expert testimony or competent records from the Kern County Recorder's Office to prove that the Grant Deed from [defendant] … did not serve to transfer title to [p]laintiff." The trial court explained further that Mr. Leverett's letter to the Billingsleys was insufficient to prove plaintiff's contention that she did not receive clear title, because that letter contained nothing more than unsworn statements, warnings to Mr. Leverett's clients, alleged facts that were unsubstantiated by other evidence, general expressions of concern and conclusory statements. The trial court held: "Mr. Leverett's letter is not evidence of the truth of its contents[;] it is merely evidence of an attorney's concern for his client. The letter does not satisfy [p]laintiff's burden of proof that [defendant] did not or could not pass title to [plaintiff]."

The trial court acknowledged that after the close of escrow Mr. Steele's letter questioned plaintiff's title,[6] but the court also considered subsequent conduct of the parties such as the fact that defendant initiated foreclosure proceedings after plaintiff failed to make her monthly payments, which confirmed that defendant believed plaintiff had title. In short, the trial court held that plaintiff received clear title to the property and there was no persuasive evidence to the contrary. In regard to the other forms of declaratory relief sought by plaintiff, the trial court found there was insufficient evidence to show that defendant materially breached its obligations under the contract to sell the property to plaintiff such that plaintiff would be excused from her obligation to pay for the property. As to defendant's steps to collect payment of the restaurant rent, the trial court noted in its judgment that such action "only followed a Trustee's Deed … which purportedly transferred the title of the property to [defendant]," after plaintiff failed to make monthly payments due under the promissory note.[7]

As to the cancellation cause of action, although the trial court agreed with plaintiff that the prior foreclosure proceedings or notices alleged in the complaint were defective or invalid, the remedy of cancellation was deemed unnecessary since there was no evidence that any foreclosure sale had or would occur as a result of the challenged proceedings or notices. To the extent plaintiff may have been seeking relief regarding the August 24, 2007, Trustee's Deed, even though plaintiff testified that she confirmed it had

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6 In the trial court's initial findings after completion of trial, it inaccurately described Mr. Steele's letter as being the only real challenge to plaintiff's title. In actuality, defendant (through Mr. Papst) went further than that and filed the quiet title complaint. Plaintiff made the trial court aware of the inaccuracy of the proposed findings prior to entry of judgment, but the trial court did not believe it was necessary to make that or other corrections. The trial court noted there had not been a timely request for a statement of decision.

7 The trial court found: "Plaintiff … does not deny that she stopped making monthly payments, nor does she deny that the real property taxes assessed against the property were not paid in a timely manner, when due."

been cancelled, the trial court noted that said Trustee's Deed was "void" because the trustee had no authority to act at the time of the alleged sale. Finally, as to plaintiff's claim to foreclose an equitable purchaser's lien in order to receive reimbursement of her purchase expenses, that remedy was denied by the trial court because plaintiff received clear title to the property and no foreclosure sale had occurred. The trial court noted further that plaintiff had not pled rescission of the contract to purchase the property.

Finally, the trial court denied defendant's cross-complaint for judicial foreclosure. The trial court explained its denial of such relief as follows: "[A]lthough [plaintiff] admitted under oath that she did not timely pay all of the installments due on the Promissory Note or the Property Taxes, the evidence offered with respect to the amount [defendant] was owed at the time of trial was considered unreliable and too uncertain in order to ascertain the amount, if any, which [plaintiff] might be in arrears after tendering payment. There is insufficient evidence to show the total amount of the payments due and the total amount of the credits for which [plaintiff] is entitled, including any collected rents and payments. Since the evidence is unreliable, [defendant] has failed on its burden of proof [under] … its Cross-Complaint."

Notice of entry of judgment was served and filed on November 9, 2010. Plaintiff's notice of appeal from the judgment followed.

DISCUSSION

I. Plaintiff's Inadequate Opening Brief[8]

Preliminarily, defendant points out that plaintiff's opening brief failed to identify how the trial court supposedly committed reversible error and/or the exact questions to be answered by this court. We agree that plaintiff's brief is inadequate in these respects. In discussing this matter further, we shall first highlight some of the fundamental principles

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[8] Plaintiff did not file a reply brief.

and procedures that are applicable when a party files an appeal, and then draw our conclusions as to the consequences of plaintiff's deficient briefing.

Because a judgment or order of a lower court is presumed to be correct on appeal, error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Thus, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656; *Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 556-557; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.) "[T]he trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited." (*Keyes v. Bowen*, *supra*, at p. 656.) When points are perfunctorily raised, without adequate analysis and authority or without citation to an adequate record, the appellate court may pass them over and treat them as abandoned or forfeited. (*People v. Stanley*, (1995) 10 Cal.4th 764, 793; *Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 699-700.)

In view of an appellant's burden to affirmatively show prejudicial error, his or her opening brief must apprise the opposing party and the appellate court of those alleged errors and/or identify the specific questions to be decided on appeal, with supporting argument. "[T]he appellant must present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; otherwise, the point will be forfeited." (*Keyes v. Bowen*, *supra*, 189 Cal.App.4th at p. 655; Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd*. (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.) This rule was "designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty

devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass." (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.) An opening brief that fails to comply with this rule "is equally confusing to the respondent, who labors under an unwarranted handicap in attempting to understandingly reply." (*Ibid*.)

Here, plaintiff's opening brief did not present or specify the issues on appeal or identify the reversible error or errors. Nor did her opening brief provide any guidance through meaningful headings.[9] As best as we are able to discern, plaintiff's claim on appeal appears to be that she disagrees with the trial court's ultimate decision to deny equitable relief other than reformation of the sale documents. She asserts that "she has proven her case," disputes one or more of the numerous findings of fact below, and asks on the basis of all the evidence that we grant her the remedies that the trial court denied.[10]

As a consequence of plaintiff's generalized opening brief, which is not directed toward any clearly specified claims of reversible error, we believe that plaintiff can prevail in her appeal only by demonstrating that she was entitled to the equitable remedies requested in her complaint *as a matter of law*. To put it differently, she will have to establish that the evidence was such that the trial court had *no discretion* whatsoever to deny relief. That being said, we now attempt to shed further light on plaintiff's burden on appeal, and our role as the reviewing court by articulating the applicable standard of review.

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9 The headings are of little help, and state simply, "[DEFENDANT'S] INTERFERENCE WITH THE PURCHASE AGREEMENT AND THE LOAN"; "[DEFENDANT'S] FAILURE TO CONVEY TITLE"; "[PLAINTIFF'S] PURCHASER'S LIEN"; and "[PLAINTIFF'S] PROPOSED DISPOSITION OF APPEAL."

10 This approach reads much more like a trial brief than an appeal. Of course, we do not retry cases on appeal and we do not substitute our discretion for that of the trial court (*FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1276).

II. Standard of Review

The decision whether or not to grant equitable remedies in a given fact situation is entrusted to the sound discretion of the trial court, and we review such decision under the abuse of discretion standard. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256; *Wm. R. Clarke Corp. v. Safeco Ins. Co. of America* (2000) 78 Cal.App.4th 355, 359.)[11] "'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' [Citations.]" (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 566.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

In applying this standard of review, we also employ the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences. (*In re Executive Life Ins. Co*. (1995) 32 Cal.App.4th 344, 358.) That is, "to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences

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11 Plaintiff's complaint alleged causes of action for declaratory relief, cancellation of the Trustee's Deed, reformation of the sale documents to accurately reflect defendant's name, and recognition and foreclosure of a purchaser's lien. Defendant correctly asserts that these claims are all equitable in nature. (See, e.g., *Adams v. Cook* (1940) 15 Cal.2d 352, 362 [declaratory relief]; *Rocha v. Rocha* (1925) 197 Cal. 396, 402 [cancellation]; *Schools Excess Liability Fund v. Westchester Fire Ins*. Co. (2004) 117 Cal.App.4th 1275, 1284, fn. 12 [reformation]; *Proctor v. Arakelian* (1929) 208 Cal. 82, 98 [lien enforcement].)

from the presented facts, an appellate court will review such factual findings under a substantial evidence standard. Our power in this regard '*begins* and *ends* with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact. [Citations.] [¶] When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court.' [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

III. No Abuse of Discretion is Shown

Plaintiff's appeal focuses on the trial court's failure to grant remedies requested under the declaratory relief and purchaser's lien causes of action. We begin with the former.

A. Declaratory Relief

Plaintiff contends the evidence at trial established that she was entitled as a matter of law to declaratory relief consisting of, among other things, a downward adjustment of the amount owed by plaintiff on the promissory note, based on the following grounds: (i) defendant's failure to convey clear title to her and (ii) defendant's interference with plaintiff's rights under the purchase agreement and loan. The trial court concluded the evidence was insufficient to support plaintiff's claims. We discern no abuse of the trial court's broad discretion.

1) Alleged Failure to Convey Clear Title

One of the premises of plaintiff's cause of action for declaratory relief was that she did not receive "clear title" to the property. The sole reason alleged in the complaint for the claimed lack of clear title was that the sale documents erroneously referred to "Cal Agri Sprayers, Inc." instead of California Agri-Sprayers, Inc. Although the trial court agreed that the sale documents (i.e., promissory note, grant deed and deed of trust) needed to be corrected or reformed to reflect defendant's true name, it concluded that plaintiff had not established that this misnomer resulted in plaintiff receiving less than

clear title to the property. We agree with that conclusion. First, the grant deed itself clearly reflected that title to the property was conveyed to plaintiff. It is undisputed that a grant deed was executed by persons purporting to be officers of defendant and was delivered to plaintiff through escrow. The delivery of such a deed gives rise to a presumption that the grantor intended to pass title to the grantee. (Civ. Code, § 1054 ["A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor"].) And a fee simple title is presumed to be intended to pass by such a grant of real property. (Civ. Code, § 1105.) Second, the trial court was correct that there was no competent evidence presented at trial (in the form of expert testimony, competent records from the Kern County Recorder's Office, or otherwise) from which the trial court could conclude that the sale documents did not accurately reflect the intention of the parties to transfer the property to plaintiff or that the sale documents were not sufficient to legally accomplish the transfer of title. As defendant correctly pointed out in its respondent's brief, there was "no evidence that the misnomer in the sale documents affected in any way the validity of the transfer from [defendant] to [plaintiff], or [plaintiff's] ability thereafter to sell, convey or otherwise hypothecate the property." In fact, plaintiff admitted in her testimony that no one had ever challenged her title or ownership of the property as a result of the misnomer.

The trial court also noted that defendant's conduct of initiating foreclosure proceedings on several occasions reflected that defendant understood plaintiff to be the true owner of the property. Similarly, defendant points out that plaintiff's subsequent conduct (post close-of-escrow) likewise provided evidence tending to show that she understood that she had good title. That is, not only did plaintiff not pursue an action in either specific performance or to quiet title, but she made improvements to the property, collected rents, paid the monthly installments on the promissory notes, attempted to cure her defaults and paid property taxes.

Plaintiff argued in her closing brief to the trial court that *other* conduct, in addition to the misnomer in the grant deed, deprived her of clear title. Although her complaint had merely alleged that such matters were an interference with her beneficial enjoyment of the property, plaintiff's closing brief argued that her alleged lack of clear title was shown by the facts that Mr. Steele, as defendant's manager, wrote a letter to plaintiff questioning her right of ownership, and that Mr. Papst, on defendant's behalf, filed the quiet title complaint against plaintiff on the ground of an apparent lack of corporate authority to execute the grant deed.[12] We note that defendant dismissed that complaint with relative dispatch in April 2007. We also observe that the quiet title complaint averred defendant's ownership of fee simple title, and thus it appeared that the only question being raised by defendant was not whether it *could* convey good title to plaintiff, but whether there had been authority to execute the grant deed on behalf of the corporation. That issue (as a theoretical basis for defendant to challenge plaintiff's title) was abandoned by defendant when its complaint was dismissed, and there was no evidence presented at trial of any grounds to question the validity of the grant deed.[13] A reasonable inference from these circumstances would be that the letter and quiet title complaint were more of a corporate matter that was soon resolved, or a brief skirmish which did not represent a real defect in plaintiff's title. To put it differently, whatever the evidentiary value of these matters, the trial court would be within its discretion to give them lesser weight than the other evidence relating to title, and the court could properly conclude (as it did) that plaintiff did not adequately prove there was a lack of clear or sufficient legal title.

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12 The trial court omitted and did not discuss the quiet title complaint in its summary of findings set forth in the judgment. (See fn. 6, *ante*.)

13 We note also that a principal (e.g., a corporation such as defendant) may be bound by the acts of its *ostensible*, as well as its actual, agents. (Civ. Code, §§ 2316-2318, 2334.)

(a) The February 2006 Letter

Our opinion is not changed by the February 2006 letter written by defendant's trial attorney, Mr. Leverett, to the Billingsleys.[14] As noted above, this letter referred to "Commonwealth Escrow Number 08450004-106-AH6, Property Address: Vacant Lot, Delano, CA 93215." The referenced escrow number and transaction were different than the sale to plaintiff. In the letter, Mr. Leverett stated to his clients that he "could be wrong," but he understood the vacant lot entailed in the proposed transaction was still in the name of a dissolved corporation, Arbol Verde, and he warned that he did not think prior efforts to cure the title problem were fully adequate. At trial, plaintiff's attorney sought to authenticate the letter by claiming it was produced by the title company during discovery. After objections to its admissibility were interposed by defendant's counsel, the trial court reserved the question of whether or not the letter was admissible because the court needed further information from defendant's counsel to establish an adequate foundation. That information never came, plaintiff's counsel did not press the matter further, and the letter was not admitted.

In any event, the trial court—in an abundance of caution—commented on the inadequacy of the letter to substantiate plaintiff's claims. The trial court explained that the letter was insufficient to prove plaintiff's contention that she did not receive clear title because it contained nothing more than unsworn statements, alleging facts that were unsubstantiated by evidence and general expressions of concern. The trial court held: "Mr. Leverett's letter is not evidence of the truth of its contents[;] it is merely evidence of an attorney's concern for his client. The letter does not satisfy [p]laintiff's burden of proof that [defendant] did not or could not pass title to [plaintiff]." We find no abuse of the trial court's discretion in its reasonable assessment of the value of this evidence,

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14 For reasons not explained in the briefing, the Billingsleys were not present at trial and were apparently unavailable.

which was never admitted. Furthermore, as aptly put by defendant: "[T]he letter was written two months before escrow closed on [plaintiff's] purchase of the property. Even if Mr. Leverett's letter related to that escrow (and it does not) and the record showed that his information about Arbol Verde was reliable and his concerns were well-founded when he wrote the letter (which it does not), the issues may well have been resolved by the time escrow closed on [plaintiff's] purchase."[15]

Looking at all the evidence, we are unable to conclude that the trial court was required as a matter of law to declare that defendant failed to convey clear or sufficient legal title to the property to plaintiff, such that in equity plaintiff would be excused of her obligation to make payments on the promissory note.[16] The trial court could reasonably infer under all of the circumstances that clear title *was* conveyed, even though some conflicting evidence and inferences existed on that issue. And even if we might have reached a different result, it is not our role to substitute our discretion for that of the trial court. (*Shamblin v. Brattain*, *supra*, 44 Cal.3d at pp. 478-479; *Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566.)

2) Alleged Interference With Plaintiff's Rights

The other main premise or ground of plaintiff's declaratory relief cause of action was the defendant's alleged interferences with her rights as purchaser and owner of the property. On appeal, plaintiff argues that those interferences included (i) Mr. Steele's letter and the quiet title complaint filed by defendant; (ii) recording the August 24, 2007

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15 Additionally, defendant points out that Mr. Leverett's letter appears to acknowledge his lack of personal knowledge regarding ownership of the vacant lot or the status of Arbol Verde, as he admits, "I could be wrong," "as far as I know, there have been no Directors or Shareholder's meetings or any records kept of the corporation," and "[t]he status of Arbol Verde needs to be examined in detail."

16 Plaintiff did not present any case law to support this particular theory. Assuming it is a valid proposition, the trial court did not manifestly abuse its discretion.

Trustee's Deed purporting to transfer ownership to defendant and the related letter which told her she no longer had any legal ownership rights to the property; and (iii) collecting rent from the tenant and allowing the tenant to extend the lease. Plaintiff does not provide this court with any legal authority for the proposition that such interferences would excuse or reduce her obligations under the promissory note, but even assuming such authority exists, the trial court's implicit refusal to grant the requested declaratory relief was clearly within its discretion.

As to Mr. Steele's letter after escrow closed and the filing of the quiet title complaint, plaintiff has not articulated what impact, if any, these had on her ability to exercise her ownership rights. When an appellant fails to support an alleged error with reasoned argument and citations to authority, the issue is forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [an issue merely raised by a party without any argument or authority is deemed to be without foundation and requires no discussion].) In any event, the record reflects that from the close of escrow until defendant recorded the August 24, 2007 Trustee's Deed, plaintiff received rents from the restaurant tenant. She also made improvements to the property, paid monthly installments due under the promissory note and paid property taxes. The trial court could reasonably infer that plaintiff suffered no appreciable interference with her use and beneficial enjoyment of the property as a result of these incidents.

As to the August 24, 2007 Trustee's Deed and related letter, it is not disputed that in October 2007, Mr. Papst notified plaintiff's attorney that the Trustee's Deed would be rescinded. Additionally, the recording of the Trustee's Deed, the collection of rents and similar efforts undertaken by defendant must be considered in light of the fact that plaintiff was at those times in default on her obligations under the promissory note. It is undisputed that under the sale documents, if and when plaintiff defaulted, defendant had the right to collect rents and apply them to plaintiff's debt, and also to take possession of

the property for the purpose of collecting such rents.[17] Defendant also had the right to initiate foreclosure proceedings if plaintiff defaulted. As the trial court found, "Plaintiff … does not deny that she stopped making monthly payments, nor does she deny that the real property taxes assessed against the property were not paid in a timely manner, when due." In view of plaintiff's default, it is difficult to see how defendant's efforts to initiate foreclosure proceedings and to collect rents could be viewed as a sufficient basis for ordering an equitable reduction of plaintiff's total financial obligations under the promissory note or any other of the equitable remedies prayed for in plaintiff's complaint. Although defendant conducted the foreclosure efforts in a defective manner and, thus, the trial court found the August 24, 2007, deed to be void, that did not mean that plaintiff was entitled to the requested declaratory relief—and certainly not as a matter of law. To the contrary, under all of the circumstances we believe the trial court was well within its discretion in denying declaratory relief premised on the alleged ground of interference with plaintiff's rights as purchaser of the property.

B. Purchaser's Lien

An equitable lien may arise in favor of a purchaser of real property where there is a failure of consideration—such as where "a purchaser who is not in default is unable to secure performance, i.e., the transfer of title from the vendor." (4 Witkin, Summary of Cal. Law (10th ed. 2005) Security Transactions in Real Property, § 18, p. 809; see *Garcia*

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17 The trial court did seek to ensure that the rents collected by defendant were properly applied and accounted for by defendant. That is, the trial court denied defendant's cross-complaint for judicial foreclosure because defendant failed to inform plaintiff of the total amount of arrears due, including "the total amount of the credits for which [plaintiff] is entitled, including any collected rents and payments." As pointed out by defendant, and contrary to the trial court's recollection, there was some evidence presented regarding the total amount of rent collected by defendant at the time of trial—i.e., "$36,540." Hence, these sums, along with any other rents collected by defendant since that time, would have to be credited toward plaintiff's amount due under the promissory note.

v. Atmajian (1980) 113 Cal.App.3d 516, 520-521 [purchaser's lien would include amount paid on contract, plus amount expended on improvements, taxes and insurance].) In this regard, Civil Code section 3050 states: "One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration." Although the statute refers to failure of consideration, a lien remedy has been extended to cases where the purchaser rescinds the contract due to fraud. (*Montgomery v. Meyerstein* (1921) 186 Cal. 459, 464-465.) The statute is intended to protect the purchaser of real property from the seller's wrong or inability to perform. (*Merrill v. Merrill* (1894) 103 Cal. 287, 293.) A purchaser who is in default under the terms of the contract is not entitled to a lien under section 3050. (*Id.* at pp. 293-294; *California Delta Farms, Inc. v. Chinese American Farms, Inc*. (1929) 207 Cal. 298, 311.)

Here, it is clear that the trial court did not err in denying relief under this cause of action. Not only was plaintiff in default, but there was nothing tantamount to a failure of consideration established by plaintiff at trial. Rather, the evidence was sufficient to show that plaintiff received clear title. As with the other equitable claims, plaintiff failed to demonstrate any abuse of discretion with respect to her alleged purchaser's lien.[18]

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18 To the extent plaintiff's appellate brief arguably includes other contentions, we disregard them as not adequately presented in a coherent and intelligible fashion with supporting argument and legal authority.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendant.

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Kane, Acting P.J.

WE CONCUR:

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Detjen, J.

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Franson, J.